



3-31-09

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
GILBERT P. HYATT)
Serial No. 08/464,034)
Docket No. 751)
Filed: June 5, 1995)
For: IMPROVED IMAGE PROCESSING)
ARCHITECTURE)

PETITION FOR AN EXAMINER'S ANSWER
UNDER 37 CFR 1.181(A)(3)

Mail Stop Petition
Hon. Commissioner For Patents
P.O. Box 1450, Alexandria, VA 22313-1450
Sir:

The Applicant respectfully petitions the Commissioner for his intervention to direct the Examiner to expeditiously provide the Applicant with an Examiner's Answer.

Examination in the instant application proceeded to the taking of an appeal and the timely filing of an Appeal Brief. An Examiner's Answer was due within two months of the filing of the appeal brief.

The examiner should furnish the appellant with a written statement in answer to the appellant's brief within 2 months after the receipt of the brief by the examiner.

See MPEP 1208 (emphasis added). The importance of an examiner expeditiously furnishing an Examiner's Answer is even more compellingly as illustrated by the fact that an Examiner's Answer takes "precedence" and "priority" over special applications.

Certain procedures by the examiners [examiner's answers] take precedence over actions even on special cases....

Applications in which practice requires that the examiner act within a set period, such as 2 months after appellants brief to furnish the examiner's answers (MPEP

§ 1208) necessarily takes priority over special cases
without specific time limits.

See MPEP 708.01 (emphasis added). Nevertheless, considerable time has elapsed, yet the Applicant has not received an Examiner's Answer. This is a violation of the plain requirements of the PTO and of the Appellant's rights.

Further, the PTO requires that the instant application be advanced out of turn for examination for the following reasons (MPEP 708.01, item I):

Applications pending more than 5 years, including those which, by relation to a prior United States application, have an effective pendency of more than 5 years.

The instant application meets both of these criteria, it has been pending more than 5 years and it has an effective pendency of more than 5 years.

In view of the above, the Commissioner is hereby petitioned to direct the Examiner to immediately prepare an Examiner's Answer in the instant application or, alternatively, to pass the instant application to issue.

The Applicant makes note that the Federal Circuit has affirmed the district court with a decision dated December 23, 2008 in appeals 2007-1050, -1051, -1052, -1053.

The Applicant further requests status of the instant application.

Because this petition seeks to invoke the Supervisory authority of the Commissioner under 37 CFR 1.181(a)(3), a petition fee is not required and thus a fee authorization is not needed.

CERTIFICATION OF MAILING BY EXPRESS MAIL: I hereby certify that this correspondence is being deposited with the United States Postal Service with Express Mail post office to addressee service under 37 CFR 1.10, postage prepaid, in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 with the express mail label number EV 323877664 on March 30, 2009.

Dated: March 30, 2009

Respectfully submitted,



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